

1 RENE L. VALLADARES  
Federal Public Defender  
2 Nevada State Bar No. 11479  
BRIAN PUGH  
3 Assistant Federal Public Defender  
411 E. Bonneville, Ste. 250  
4 Las Vegas, Nevada 89101  
(702) 388-6577/Phone  
5 (702) 388-6261/Fax  
Brian\_Pugh@fd.org

6 Attorney for Wayne Harper  
7

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 WAYNE HARPER,

14 Defendant.  
15

Case No. 2:16-cr-211-GMN-NJK

**DEFENDANT'S UNOPPOSED**  
**MOTION TO CORRECT**  
**TECHNICAL ERROR IN**  
**JUDGMENT PURSUANT TO FED.**  
**R. CRIM. P. 35**  
*(Expedited treatment requested)*

16 Certification: This motion is timely filed.

17 The defendant, WAYNE HARPER, by and through his attorney of record, Brian Pugh,  
18 Assistant Federal Public Defender, submits this unopposed motion to correct a technical error  
19 in the judgment for consideration by the Court.  
20

21 DATED this 24th day of April 2019.

22 RENE L. VALLADARES  
Federal Public Defender

23 By: /s/ Brian Pugh

24 BRIAN PUGH  
Assistant Federal Public Defender  
25  
26

1                   **MOTION TO CORRECT TECHNICAL ERROR IN JUDGMENT**

2                   On April 11, 2019, Mr. Harper appeared before this Court for sentencing. ECF No. 72.  
3                   This Court sentenced Mr. Harper to five years of probation. ECF No. 73. At the time of  
4                   sentencing, Probation and the Government recommended that one of Mr. Harper's conditions  
5                   of probation be drug testing. However, based upon the three decades that have passed since  
6                   Mr. Harper's last arrest for a drug related offense and the twelve years since he last used, this  
7                   Court did not impose a drug testing condition.

8                   The judgment in this case does not include a drug-testing special condition of probation.  
9                   See ECF No. 73 at 4. However, Mandatory Condition 3 states the following:

10                   You must refrain from any unlawful use of a controlled substance. You must  
11                   submit to one drug test within 15 days of placement on probation and at least  
12                   two periodic drug tests thereafter, as determined by the court, not to exceed  
13                   104 tests annually.

14                   ☐       The above drug testing condition is suspended, based on the  
15                   court's determination that you pose a low risk of future  
16                   substance abuse. (*check if applicable*)

17                   ECF No. 73 at 2. On Mr. Harper's judgment, the box suspending the drug testing condition is  
18                   not checked. *Id.* Mr. Harper now requests that this Court amend the judgment by checking the  
19                   box that would suspend the drug testing condition.

20                   Rule 35 authorizes the Court to correct a sentence within 14 days after sentencing to  
21                   correct an error that resulted from an "arithmetic, technical, or other clear error." Fed. R. Crim.  
22                   P. 35(a). On the date of sentencing, it was this Court's intent that Mr. Harper not be subject to  
23                   drug testing. Mr. Harper requests that this Court amend the judgment to reflect this Court's  
24                   intention.

25                   The undersigned has consulted with the assigned AUSA on this case and he stated that  
26                   the government does not object to Mr. Harper's proposed correction to the judgment.

                  Mr. Harper requests expedited treatment of this motion because 12 days have passed  
                  since his sentencing.

1 **CONCLUSION**

2 Mr. Harper respectfully requests that this Court correct the judgment by checking the  
3 box under mandatory condition 3 thereby suspending the drug testing condition of probation.

4 Dated this 24th day of April 2019.

5 Respectfully submitted,

6 RENE L. VALLADARES  
7 Federal Public Defender

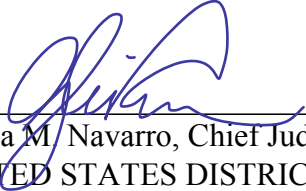
8 By: /s/ Brian Pugh

9 BRIAN PUGH  
Assistant Federal Public Defender

10  
11  
12 **ORDER**

13 **IT IS HEREBY ORDERED** that the above Unopposed Motion to Correct Technical  
14 Error in Judgment Pursuant to Federal Rule of Criminal Procedure 35, (ECF No. 75), filed by  
15 Defendant Harper is **GRANTED**. The judgment shall be corrected accordingly.

16 **DATED** this 25 day of April, 2019.

17  
18   
19 Gloria M. Navarro, Chief Judge  
UNITED STATES DISTRICT COURT

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6

- 2
- 3
- 4

5  
6  
7  
8

0  
1  
2  
34  
5